

REMARKS

The undersigned wishes to thank the Examiner for her time and courtesy extended during the telephonic interview held on August 12, 2010. A common understanding was reached on many elements of the invention and Applicant's representative is grateful for the many helpful suggestions offered by the Examiner. The following is intended to constitute a proper recordation of such interview in accordance with MPEP 713.04. It was agreed during the interview that arguments and claim amendments could be made to overcome the rejections. The amended claims included with this response reflect the comments and suggestions offered by the Examiner.

Upon entry of this paper, claims 19-83 will be pending in the application and are presented for consideration. Claims 1-18 were previously canceled, and claims 19-31, 41-47, 58-65, and 70-73 remain withdrawn from consideration. Applicant hereby amends claims 32, 35, 48, 53, 66-68, and 74 and adds new claims 76-83. Applicant submits that these claim amendments introduce no new matter to the application. Support for the claim amendments can be found, e.g., at pages 12, 16, 24-26, 28-29 and Figure 8 of the application as filed, and in the previously-canceled claims.

Rejection Under 35 U.S.C. § 102(e)

The Office Action rejects claims 32-34, 40, 48-52, 55, 57, 66, 68, 69, 74 and 75 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7, 237,554 to Conrad et al. ("Conrad"). Of these, claims 32, 48, 66, 68, and 74 are independent. In particular, the Office Action on page 3 states that Conrad discloses an anchor member that is "engaging both the jaw bon (JB) and the tongue (T)."

Applicant respectfully submits that Conrad fails to disclose every element of independent claims 32, 48, 66, 68, and 74. Amended independent claims 32, 48, and 66 recite "neither the retractor member nor the anchor member configured to be tethered to bone." Independent claims 68 and 74 recite that "the retractor member and the anchor member are configured to maintain a position on an external surface of the soft tissue."

With respect to amended independent claims 32, 48, and 66, Applicant respectfully submits that Conrad explicitly describes an anchor member that is tethered to bone. The device of Conrad includes a static end and a tissue in-growth engaging end where the static end is “secured to a bony structure adjacent to tissue to be contracted.” Abstract of Conrad. Unlike Applicant’s invention, Conrad describes an anchor that is “secured to the jawbone.” Col. 3, ll. 32-33 and FIGS. 1-4 of Conrad. Accordingly, Applicant submits that Conrad is lacking at least this element of each of Applicant’s pending independent claims 32, 48, and 66.

In addition, the retractor member and anchor member of Conrad are not configured to maintain a position on an external surface of soft tissue as recited in Applicant’s amended independent claims 68 and 74. The tissue in-growth end of Conrad’s device “induces growth of tissue into the end 14 to secure the end 14 to surrounding tissue” and is not configured to maintain a position on an external surface of soft tissue. Col. 3, ll. 25-29 of Conrad. Even if the tissue in-growth end is initially positioned on the external surface of soft tissue, tissue will be induced to grow around it due to the nature of material (e.g., felt or PET), thus making the tissue in-growth end internal and not *maintained* on an external surface of soft tissue. Col. 3, ll. 24-31 of Conrad.

Moreover, the anchor member of Conrad is also not configured to maintain a position on an external surface of soft tissue. The anchor of Conrad is a “treaded eye-bolt” that is secured to the jawbone or hard palate. Col. 3, ll. 32-35 of Conrad. A treaded eye-bolt cannot be maintained on an external surface of soft tissue. Even if the treaded eye-bolt of Conrad is initially place on an external surface of soft tissue, it will be drawn through the soft tissue toward the tissue in-growth end over time due to the tension along the elongated member. Therefore, the anchor member is not configured to *maintain* a position on an external surface of soft tissue. Accordingly, Applicant submits that Conrad is lacking at least this element of each of Applicant’s pending independent claims 68 and 74.

In view of the foregoing, Applicant respectfully submits that Conrad fails to teach or suggest each and every element of independent claims 32, 48, 66, 68, and 74, because Conrad fails to disclose that “neither the retractor member nor the anchor member configured to be tethered to bone” and that “the retractor member and the anchor member are configured to maintain a position on an external surface of the soft tissue.” For at least these reasons,

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of these claims under 35 U.S.C. § 102(e) in view of Conrad. Furthermore, Applicant respectfully submits that claims 33-34, 40, 49-52, 55, 57, 69, and 75 are also allowable as each depends from an allowable independent claim.

Rejection Under 35 U.S.C. § 103(a)

The Office Action rejects dependent claims 35, 37, 53, 56, and 67 under 35 U.S.C. § 103(a) as allegedly being unpatentable over “Conrad.” As discussed above, Conrad fails to teach or suggest each and every element of independent claims 32, 48, 66, 68, and 74. Applicant respectfully submits that claims 35, 37, 53, 56, and 67 are allowable as each depends from an allowable independent claim.

The Office Action also rejects claims dependent claims 36, 38, 39, and 54 under 35 U.S.C. § 103(a) as allegedly being unpatentable over “Conrad” in view of U.S. Patent No. 4,254,774 to Boretos (“Boretos”). As discussed above, Conrad fails to teach or suggest each and every element of independent claims 32, 48, 66, 68, and 74. Applicant submits that Boretos does not cure the defects of Conrad.

Boretos describes the manufacture of catheters with external diameters less than 1 mm and external balloons with walls less than 0.002 inches in thickness. Applicant submits that Boretos does not cure the deficiencies of Conrad in that Boretos, either alone or in combination with Conrad, does not teach or suggest that “neither the retractor member nor the anchor member configured to be tethered to bone” and that “the retractor member and the anchor member are configured to maintain a position on an external surface of the soft tissue.” Applicant also respectfully submits that claims 36, 38, 39, and 54 are allowable as depending from allowable independent claims.

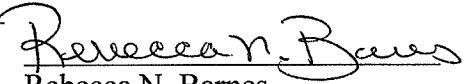
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Conclusion

Applicant requests that the Examiner reconsider the application and claims in light of the foregoing amendments and remarks, and respectfully submits that the claims are in condition for allowance. The Examiner is invited to call the undersigned at (617) 526-9626 to discuss the application.

Respectfully submitted,

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